BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
The Effect of Foreign Mobile Termination Rates On U.S. Customers	)	IB Docket No. 04-398
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REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") hereby submits its reply comments pursuant to the Notice of Inquiry released by the Commission in the above-captioned proceeding ("*Notice*").[1] In its initial comments, Sprint argued that the Commission should initiate a rulemaking to address the problems presented by high foreign mobile termination rates. The *Notice* also elicited support for Commission action on this issue from U.S. carriers that must make high settlement payments to terminate traffic to mobile telephones in foreign countries, as well as opposition to such involvement from parties that benefit from such payments. The opposition offers four primary arguments: (1) foreign mobile termination rates are not a problem because they are not excessive and not discriminatory; (2) if these rates are a problem, foreign national regulatory authorities (NRAs) will take care of it; (3) the real problem is not foreign mobile termination rates, but the mark-up by U.S. carriers of those rates; and (4) even if foreign mobile termination rates are a problem, the Commission is legally constrained from addressing that problem. Sprint addresses each of these arguments in turn in this reply and demonstrates that they should not dissuade the Commission from initiating a rulemaking on this matter.

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[1] The Effect of Foreign Mobile Termination Rates on U.S. Customers, *Notice of Inquiry*, 19 FCCR 21395, IB Docket No. 04-388, FCC 04-247 (released Oct. 26, 2004).

I. FOREIGN MOBILE TERMINATION RATES ARE EXCESSIVE.

A number of parties argue that the rates in place for foreign mobile termination are not excessive, in part because the cost recovery mechanisms of "Calling Party Pays" ("CPP") inter-carrier compensation regimes, such as those in place in Europe, differ from those of "Receiving Party Pays" ("RPP") systems, such as that in the United States.[2] As noted in its comments, Sprint does not take issue with the intrinsic merits of CPP versus RPP, or challenge the right of sovereign nations to utilize the compensation system of their choice.[3] The Commission's concern should not be with the relative merits of CPP, but with the effect of high foreign mobile termination rates premised on CPP: very high out-payments from U.S. carriers that are ultimately borne by U.S. consumers. The CPP system may have certain merits within itself,[4] but the absence of reciprocity between the two types of systems creates an imbalance that must be redressed. Rather than try to second-guess the cost model utilized by CPP carriers and their regulators, the Commission need merely take note of the rates themselves and the effect of these rates on U.S. consumers.

There can be no denying that foreign mobile termination rates in many countries, especially CPP countries, are very high, resulting in high payments from U.S. carriers and consumers. For example, INTUG notes that the average mobile termination rate for European Union member states in 2004 was € 0.1476 a minute, or almost $ 0.19 a minute at the current

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[2] See, *e.g.*, Comments of BellSouth at 2-3.

[3] Sprint Comments at 2-5.

[4] Whatever the merits of the CPP system, even its defenders' experts note that "the CPP principle" results in "little incentive to change providers when the price of finalising calls goes up," in other words, "inelastic demand" leading to a "bottleneck" that "may require regulation." Comments of Vodafone, Annex C, Attachment 4, at 31-32 (Jordi Gual paper).

exchange rate.[5] The regime under which European mobile carriers operate may dictate that such rates are justified by the logic that all calling parties (including those from the United States) should defray a substantial portion of the costs of European mobile carriers, while these carriers' subscribers should bear an equal measure less. Sprint submits that such logic does not bar the Commission from acting within its jurisdiction to prohibit U.S. carriers from making payments that can be deemed excessive based on a comparison of the value of the services provided. Thus, for example, if it is postulated that (1) the long-run incremental costs of mobile termination in the United States do not exceed 4 to 6 cents per minute,[6] (2) such costs can be used as a surrogate for the consumer value of mobile termination, (3) the consumer value of call termination in the United States is roughly equal to that of call termination in Europe and other CPP countries, and (4) the consumer values of call origination and call termination are roughly equal to each other, [7] then a benchmark rate of 8 to 12 cents a minute can be easily and immediately justified for the termination of mobile calls to CPP countries, because such a rate encompasses the consumer value of both call origination and termination consistent with the principles underlying the CPP regime.[8] This logic is at least as convincing as the notion that U.S. callers should pay for a disproportionate share of the costs of CPP carriers, without limit

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[5] Comments of INTUG at 9, Table 4.

[6] Sprint Comments at 13-14 (citing the cost studies created by Sprint for reciprocal compensation arbitrations in New York and Florida AT&T estimates). These costs studies included an ample allocation of common costs. AT&T estimates the additional cost of international call termination on mobile networks at 4 cents a minute. Comments of AT&T at 46-47.

[7] See Comments of AT&T at 44 (citing an Ovum report that stated "the cost of mobile termination may be estimated as . . . 50% of the price of a mobile on-net call.")

[8] Over time, these benchmarks could be transitioned to account for the decreasing costs of mobile technology and to focus only on the costs of termination. Sprint believes that the end-point of a mobile termination benchmark scheme would be in the 4 to 6 cent a minute range.

and with no reciprocal payments by CPP callers to U.S. carriers, and it will result in lower out-payments by U.S. carriers and lower collection rates for U.S. consumers.[9]

II. RELIANCE ON NATIONAL REGULATORY AUTHORITIES IS NOT SUFFICIENT TO PROTECT U.S. CONSUMERS FROM HIGH FOREIGN MOBILE TERMINATION RATES.

Several parties urge that the Commission should not be involved in the issue of foreign mobile termination rates, because the foreign national regulatory authorities (NRAs) are dealing with this question, and in any case these rates exhibit a downward trend. That fact that NRAs have opened their eyes to the problem of high mobile termination rates is not a reason for inaction by the Commission. INTUG notes that there is considerable opposition to NRA action on this issue:

> The mobile network operators [MNOs] have shown a willingness to lobby up to the highest level and to litigate to the maximum extent possible; to speak before any politician, regulator or judge that will give them time. Delay purchased in this way literally pays dividends to shareholders.
>
> The FCC faces the problem of engagement with foreign governments and regulators already under considerable pressure from MNOs not to intervene or to do so only very slowly. Support from the FCC for more determined interventions may, if judiciously applied, help those governments and NRAs. A determination on the substance of the argument, on the market definition, on the methodological issues might be very valuable, especially since some of the expert opinion used abroad to justify high termination fees comes from the USA.[10]

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[9] Sprint cannot address the question whether foreign mobile termination settlement arrangements discriminate against U.S. carriers, as the mark-up, if any, by foreign fixed gateway carriers is opaque. Sprint notes that foreign mobile carriers in CPP regimes routinely discriminate in favor of their own subscribers in setting termination rates. See, *e.g.*, Comments of NII Holdings at 9 (noting the on-net termination rate of Telefonica Peru of $0.03 a minute versus the wholesale termination rate offered to other mobile providers of $0.207 a minute). In any event, Sprint submits that the CPP-RPP incongruity is by its very nature discriminatory and that, at a minimum, its effects must be addressed by the Commission.

[10] Comments of INTUG at 10.

In addition, the opponents of FCC involvement in this issue overstate the downward trend in mobile termination rates in Europe. In considering the EU average rate noted by INTUG, it is true that that rate declined by 7.6% from 2002 to 2003 and 19.1% from 2003 to 2004. The latter decline was anomalous, [11] and even if one optimistically assumes a steady decline of 8 % a year through the gradual efforts of European regulators in benchmarking and jawboning, it will still be 2012 before the EU average mobile termination rate is below 10 cents a minute.

Moreover, more countries are adopting CPP regimes, which will add to the outflow of U.S. dollars in settlements for mobile termination. For example, AT&T describes how the adoption of CPP in Mexico will essentially negate the benefits of last year's decision by a WTO panel finding unlawful the high settlement rates for fixed line services imposed in that country.[12] The FCC's attention to high foreign mobile termination rates resulting from the adoption of CPP regimes is essential to deter such countries as Mexico from authorizing excessive rates.

III. SPRINT'S MOBILE TERMINATION SURCHARGES ARE NOT EXCESSIVE.

Some foreign carriers have attempted to distract the Commission by arguing that it is the surcharges by U.S. carriers for mobile termination, and not the rates charged by foreign mobile carriers for termination, that pose the real problem.[13] Sprint explained in its comments the

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[11] The 2004 decline was primarily the result of the OFCOM decision that reduced the mobile termination rate in the U.K. by more than 50%. This decision was bitterly criticized by European mobile operators, and the rates in three EU countries, France, Italy and Luxembourg, actually went up in 2004. Germany's rate has stayed essentially stable at just over € 0.15 a minute during the entire three-year period.

[12] Comments of AT&T at 8-10.

[13] Telefonica accuses the main U.S. international carriers of not passing on settlement rate reductions to U.S. consumers, but instead using these reductions "to significantly increase their profits," thus demonstrating a laughable ignorance of the profitability of AT&T's, MCI's and Sprint's long-distance operations, while blithely dismissing any U.S. decision "based solely on cost savings for its own consumers" as contrary to world trade principles. Comments of

additional costs, beyond the direct costs of mobile termination settlements, that are involved in setting surcharge levels including bad debt, billing adjustments, dialing code abuse, and fraud.[14] Owing to these factors, if Sprint simply passed through direct mobile termination settlement costs, then Sprint would simply lose money by providing U.S. consumers international calling services to foreign mobile telephones. Because Sprint intends to stay in the business of providing U.S. consumers with international calling services to foreign mobile telephones, its pricing strategy will continue to reflect all the costs associated with providing such service. If the Commission were to act to reduce payments premised on excessive foreign mobile termination rates, Sprint's direct and indirect costs for this termination would decrease, and thus, so would Sprint's mobile termination surcharges.

DoCoMo cites a comparison of its mobile termination rate of 10.2 cents a minute with U.S. surcharges up to 14 cents a minute, which happens to be the level of Sprint's surcharge.[15] But just as Sprint does not know the details of DoCoMo's arrangements with Japanese fixed carriers, neither does DoCoMo know the details of Sprint's arrangements with these same fixed carriers, as it admits.[16] It suffices to note that Sprint pays to within four-tenths of a cent below its surcharge level to a Japanese fixed carrier for the termination of some mobile traffic in Japan. Sprint's direct costs per call for mobile termination in Japan depend on a variety of factors,

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Telefonica at 3, 8-9. This from a carrier that allegedly uses its high off-net termination rates to subsidize its on-net costs and its market power in fixed services to eliminate any pressure from that quarter toward lower mobile termination rates. Comments of NII Holdings at 9, 11.

[14] Sprint Comments at 12-13.

[15] Comments of NTT DoCoMo at 8.

[16] *Id.* at 7.

including the combination of fixed and mobile carriers that handle this termination, not simply the rate charged by DoCoMo.

Substantial customer confusion would result if Sprint's surcharge schedule attempted to mirror the myriad complexities of the settlement arrangements Sprint has with various foreign carriers, which can involve multiple rates, volume commitments and discounts, and varying interconnection configurations. Instead, Sprint fixes a single surcharge rate per country for mobile termination, one designed to recover its direct and indirect costs, as well as to reflect competitive conditions on that country route. This approach of a single surcharge rate per country is not designed to turn foreign mobile termination into a profit center, but merely to provide customers with clear information about the additional charges for calls directed to foreign mobile telephones and thus avoid the revenue losses that would surely result from a more complex schedule of surcharges. Because mobile termination often substantially increases the charges for overseas calling, any reduction in clarity and predictability for these charges can only result in additional customer surprise and disappointment, with the further consequences of increased collection problems and decreased demand. The best resolution for high mobile termination surcharges is not greater pricing complexity, but lower mobile termination rates that will result in lower surcharges.

IV. THE COMMISSION HAS THE LEGAL AUTHORITY TO ADOPT A BENCHMARK RATES POLICY THAT ADDRESSES SETTLEMENT PAYMENTS FOR FOREIGN MOBILE TERMINATION.

Opponents of Commission action to protect U.S. consumers from high foreign mobile termination rates argue that the Commission lacks jurisdiction to regulate foreign mobile termination rates, especially because U.S. carriers for the most part do not have direct relationships with foreign mobile carriers and the rates charged by foreign mobile carriers to foreign fixed carriers are strictly a matter of domestic concern within the foreign state.[17] These parties misunderstand the benchmark mechanism and the judicial decision upholding it, *Cable & Wireless, P.L.C. v. FCC*.[18] The Commission's *Benchmark Rates Order* regulates domestic carriers, not foreign carriers.[19] It does not regulate what foreign carriers charge for termination, but what U.S. carriers may pay as a settlement rate for international traffic.[20] The "extraterritorial consequences" of such Commission action do not undercut the Commission's authority to take such action.[21] Similarly, Commission action to reduce the negative effects of excessive foreign mobile termination rates need not be directed at mobile termination rates *per se*, but simply at the level of payments that U.S. carriers may make in response to foreign carrier demands for mobile termination compensation.

Some foreign carriers argue that a benchmark system for mobile termination settlements could place foreign fixed correspondent carriers in a "squeeze," owing to their position as middle-men between U.S. carriers and the terminating foreign mobile carriers.[22] This argument might be more convincing were it not, as AT&T conclusively shows, that foreign international carriers are affiliated with mobile carriers in 95 percent of the countries where mobile termination settlement rates exceed fixed rates and that these affiliated mobile carriers control

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[17] See, *e.g.*, Comments of the GSM Association at 2-5.

[18] 166 F.3d 1224 (D.C. Cir. 1999).

[19] *Id.* at 1231.

[20] See Comments of AT&T at 32 n.91, 39 & n.120 (citing, *inter alia*, *International Settlement Rates*, 12 FCCR 19,806, ¶¶ 1, 279, 312 (1997) ("*Benchmark Rates Order*").

[21] *Cable & Wireless*, 166 F.3d at 1230.

[22] See, *e.g.*, Comments of Cable & Wireless at 10.

the majority of the market in two-thirds of those countries.[23] Payments from fixed correspondents for mobile termination in those cases are merely inter-affiliate transactions.

Even where there is no affiliation between foreign international fixed carriers and foreign mobile terminating carriers, the application of benchmarks to mobile termination settlements will not come unheralded. Foreign international carriers will be able to make appropriate arrangements with terminating mobile carriers and U.S. carriers with full knowledge of an appropriately transitioned benchmark system applicable to mobile termination settlements. Such FCC action would not constitute extraterritorial regulation of foreign mobile termination rates, but it would be a powerful tool to pressure foreign carriers and regulators to lower these rates to reasonable levels. As a legal matter, the D.C. Circuit did not hold that "conflicting obligations" placed on foreign carriers by the *Benchmark Rates Order* and the policies of their national governments were necessarily a violation of international comity. It simply did not address the question,[24] and the Commission held on reconsideration that the "indirect effect on foreign entities" was not a violation of international comity.[25]

Some foreign carriers argue that application of a benchmark rates policy to reduce settlement payments inflated by high foreign mobile termination rates would be inconsistent with principles embodied in the General agreement on Trade in Services ("GATS"), administered by the World Trade Organization (WTO").[26] The Commission should of course consult with the Department of State and the U.S. Trade Representative before taking any action that could have

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[23] Comments of AT&T at 40-41 & Appendix A.

[24] *Cable & Wireless*, 166 F.3d at 1230.

[25] *International Settlement Rates*, 14 FCCR 9256, ¶¶ 22-24 (1997).

[26] See, *e.g.*, Comments of Telefonica at 2-4.

a significant effect on U.S. trade relations. Sprint submits, however, that any action before the WTO protesting U.S. trade policy in setting benchmark rates applicable to mobile termination settlements would necessitate an investigation into the cost basis for above-benchmark rates. Assuming that the Commission would set its benchmarks for mobile termination at generous levels to ensure cost recovery by foreign carriers, as under the current benchmark system, such an investigation could have only a salutary effect.

V. CONCLUSION

For the reasons given above, Sprint respectfully requests the Commission initiate a rulemaking proceeding with the goal of adopting rules and policies that will foster cost-oriented foreign mobile termination rates.

Respectfully submitted,

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